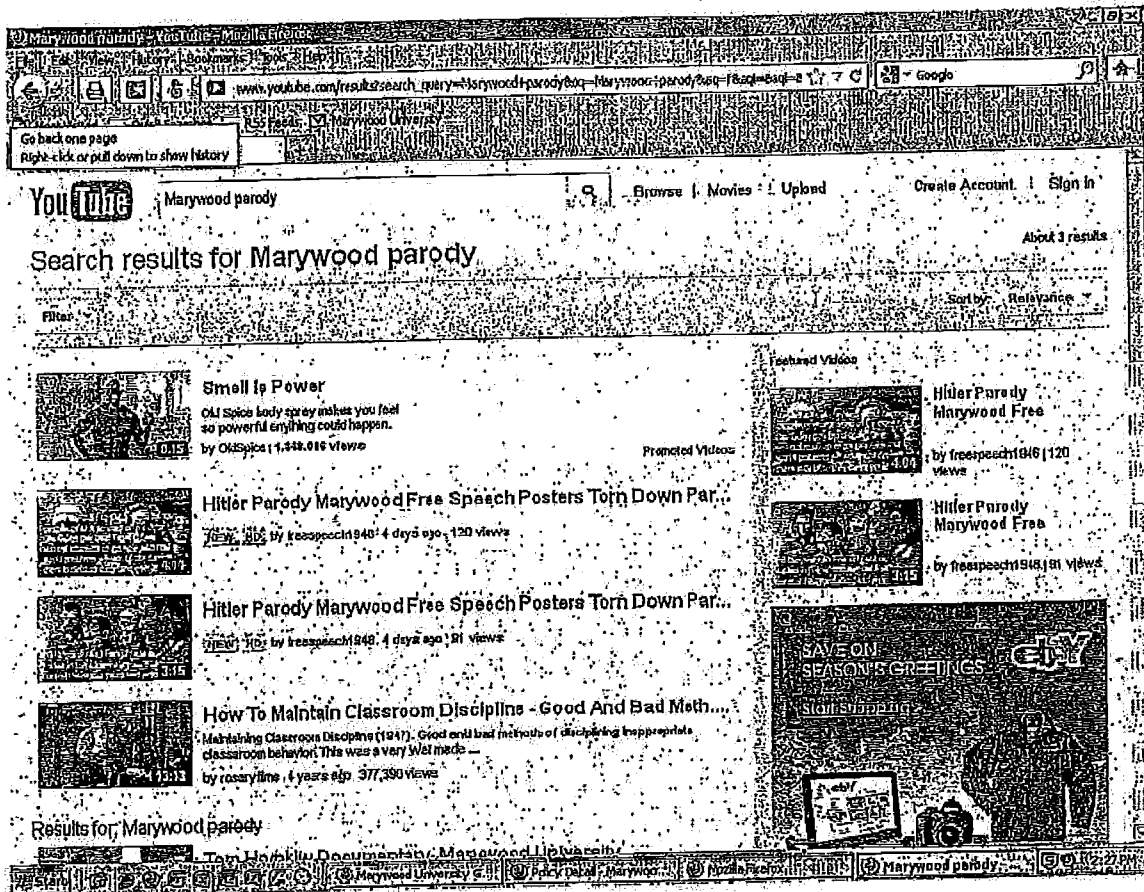


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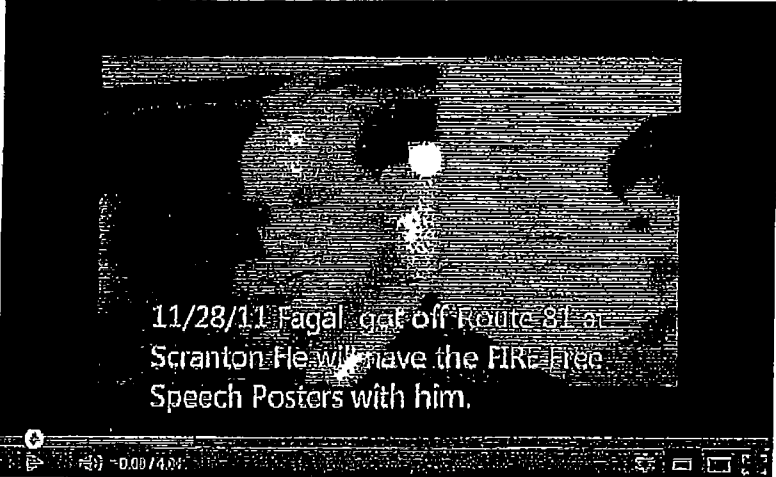
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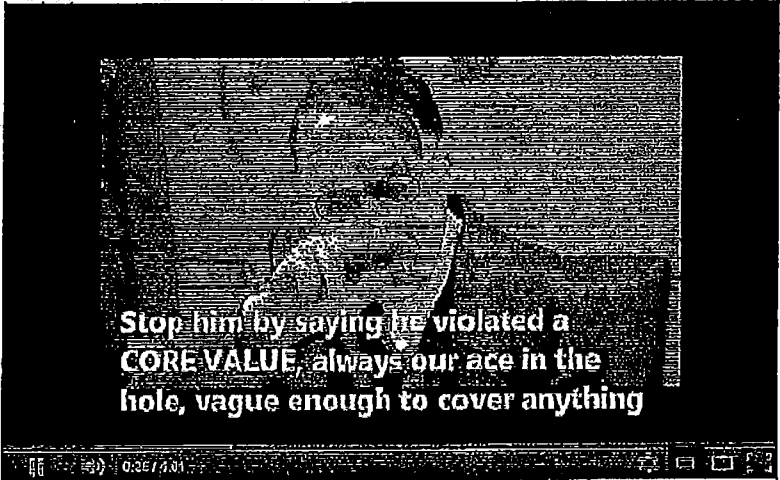
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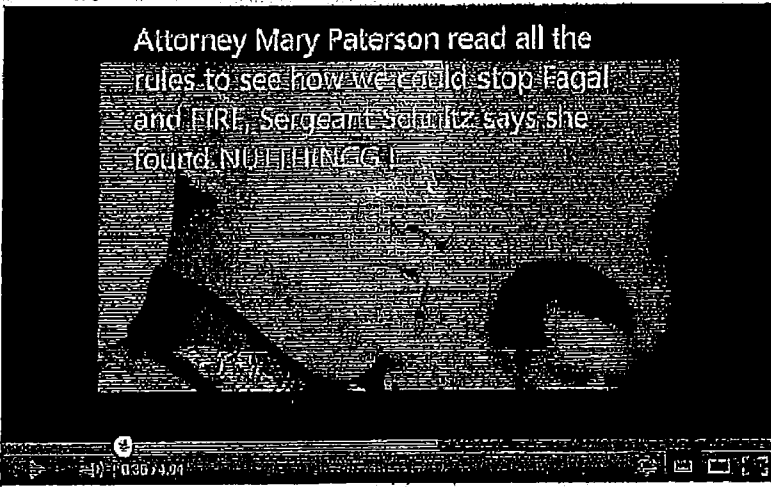
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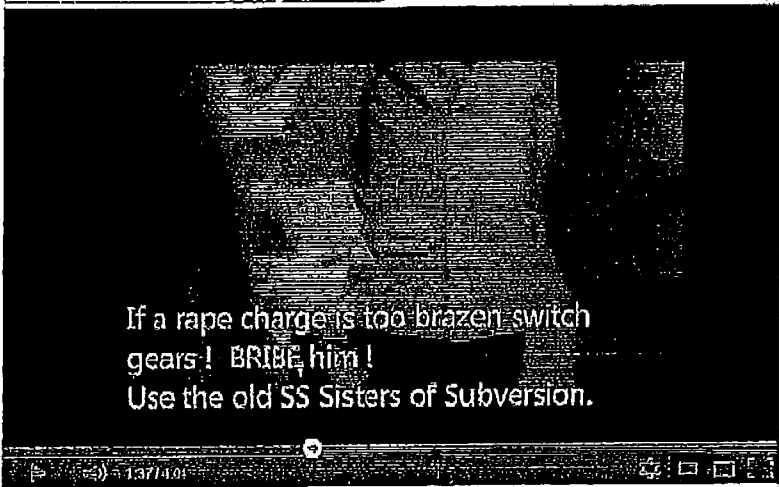
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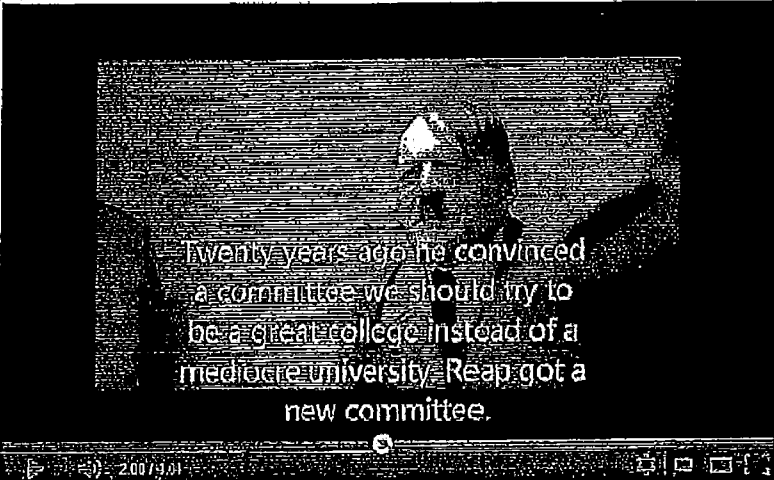
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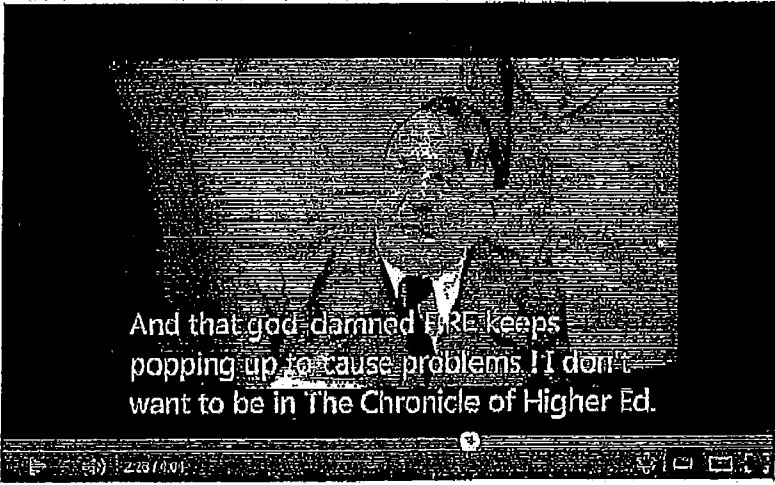
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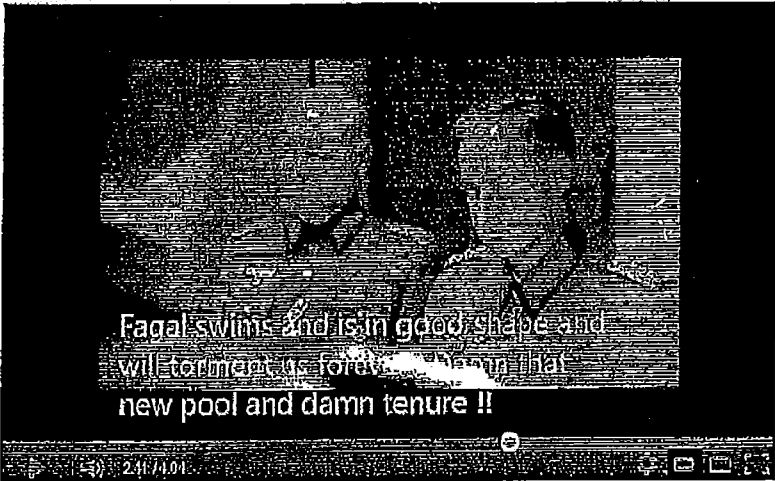
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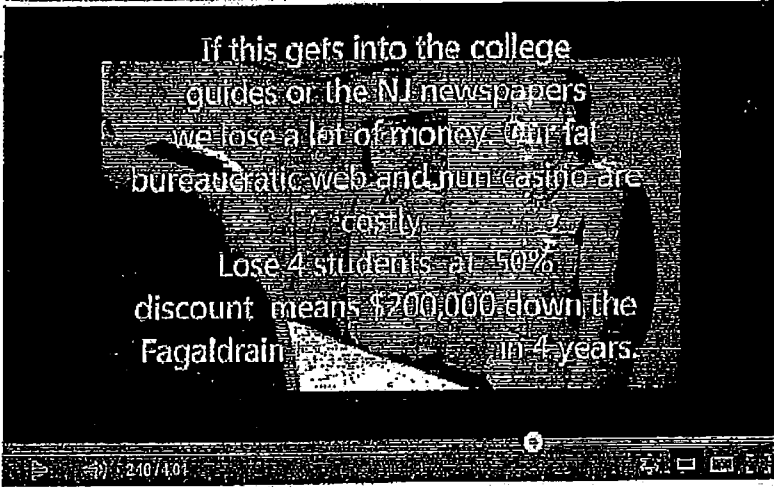
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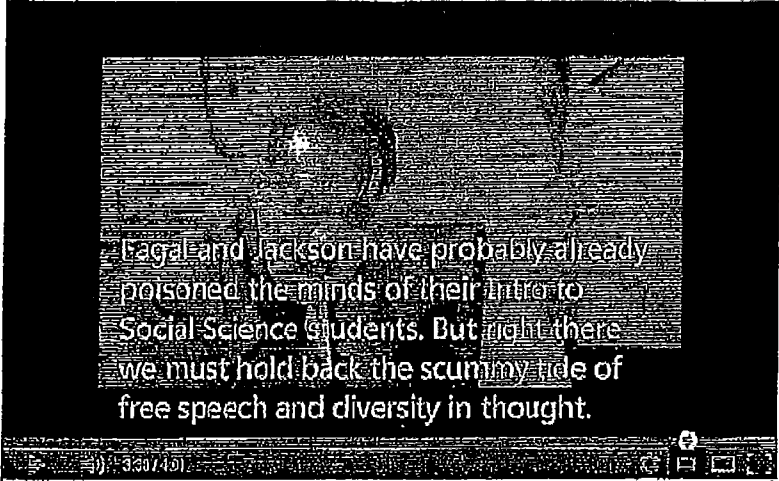
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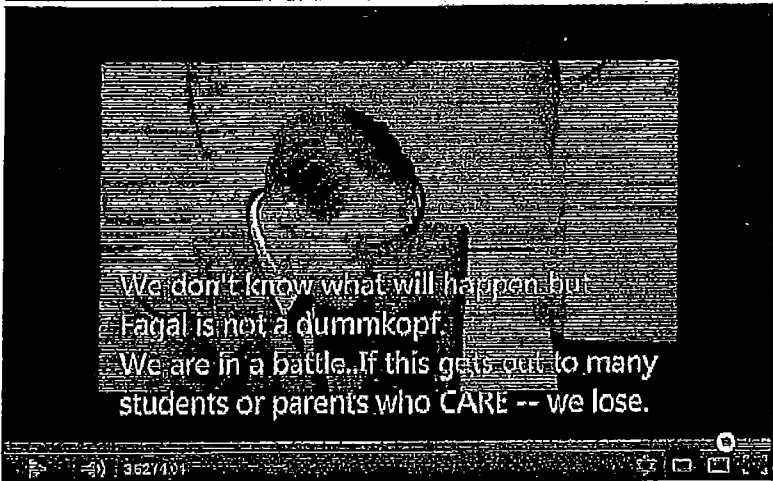
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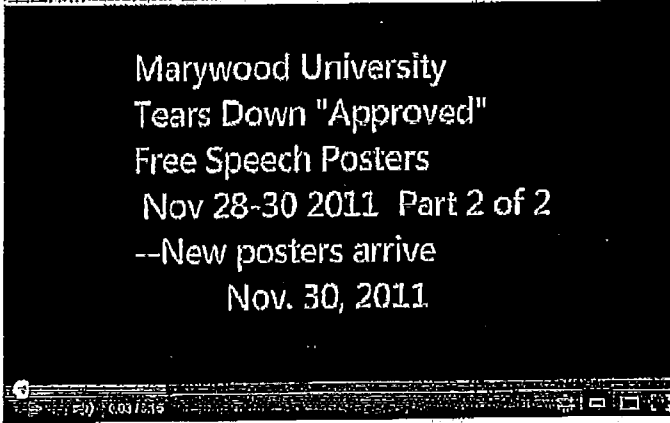
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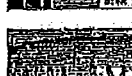
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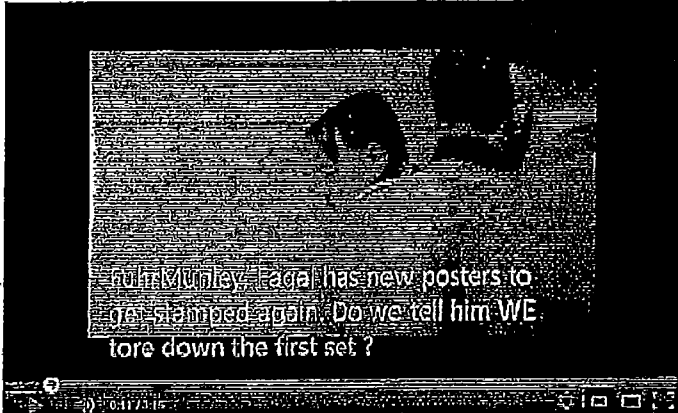
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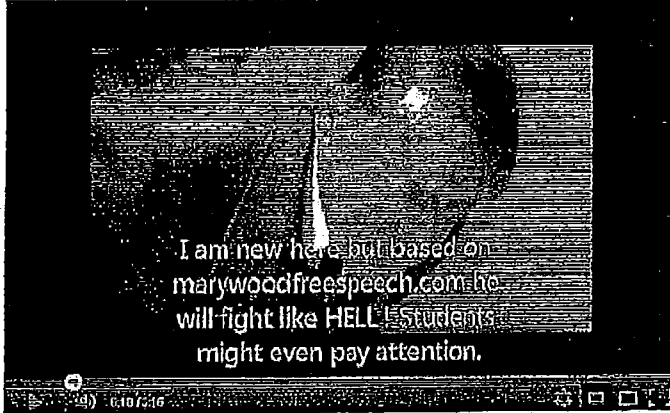
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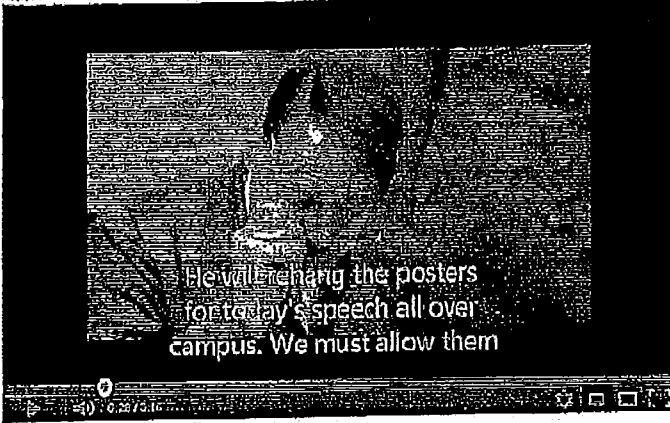
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
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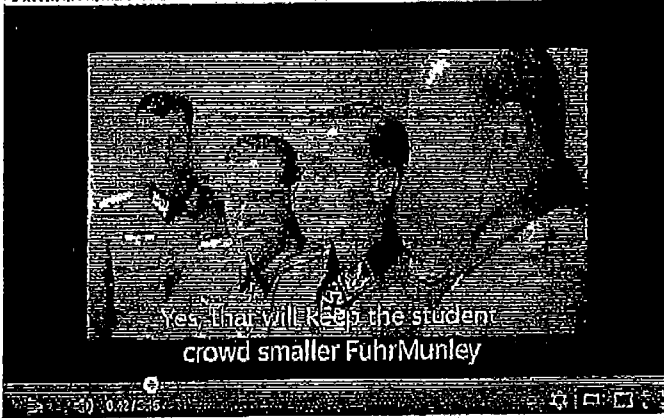
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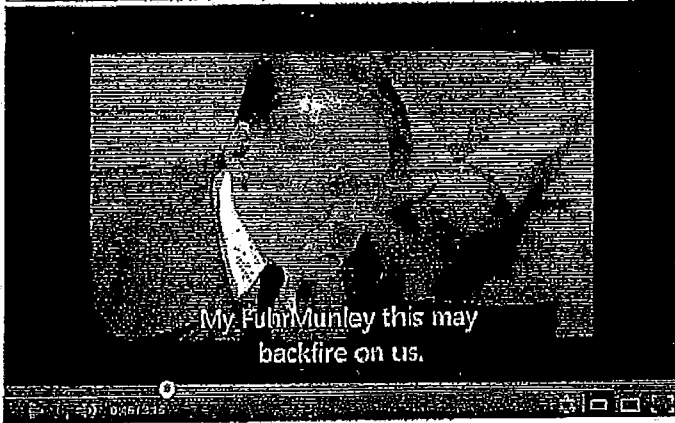
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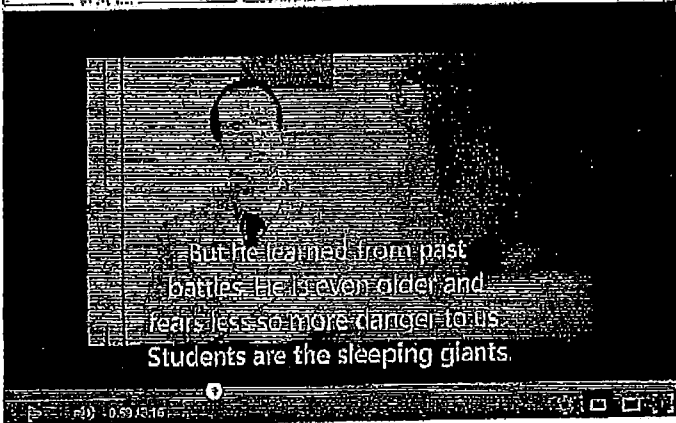
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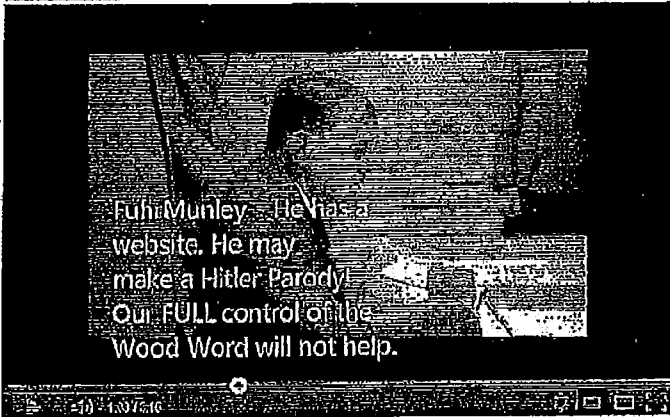
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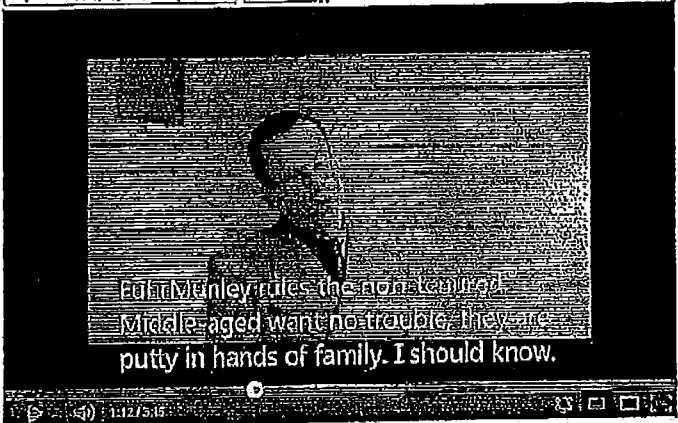
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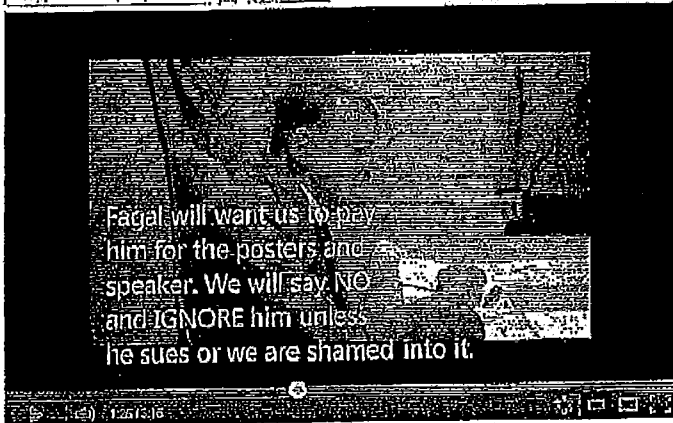
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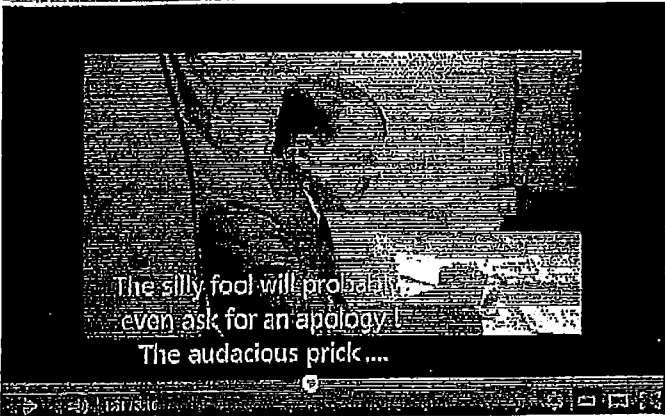
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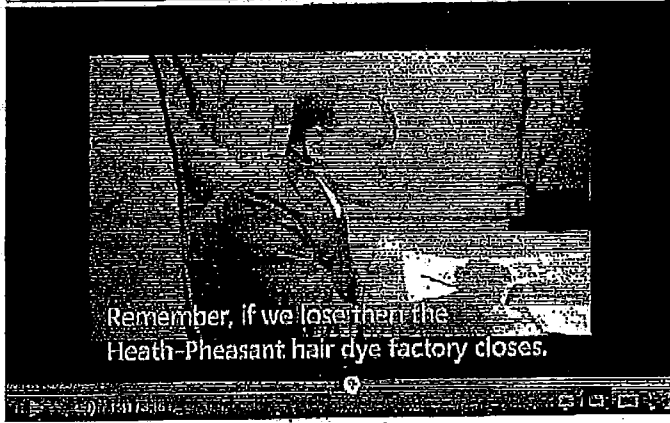
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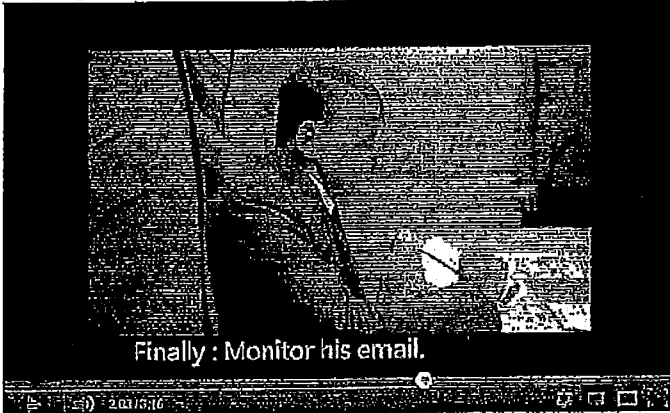
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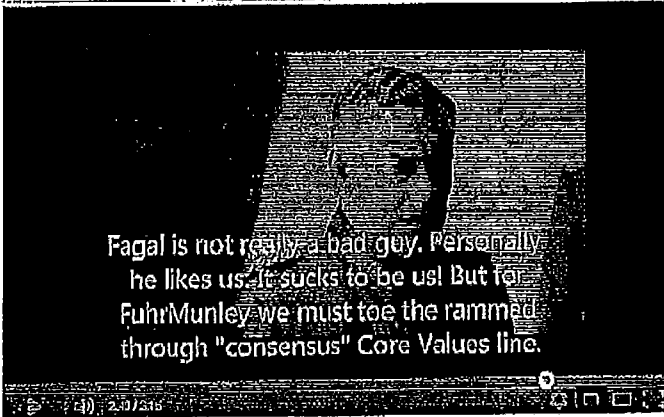
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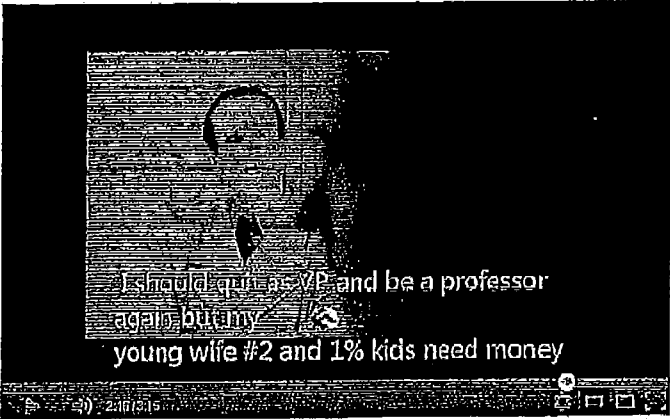
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338 views

Marywood University Dance Team-2009
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771 views

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by MYCinspiredMad
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THE VOW
Is a Hitler Parody By: Wally 2012

Amazingly Cool
by mystringbox
263,997 views

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by freespeech1946
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My Fashion Show!!!!
by Parid Jackson
122 views

The Story of Two Sophomores (Marywood)
by BEMayProductions
824 views

Marywood University Tour
by M4P18x
388 views

Marywood University Dance Team-2009
by cm008
771 views

Maggie Nuttall's By The Seat Of My Pants: Tais ...
by NYCAspofWord
71 views

Someone at Marywood Speaks Your Language
by MarywoodU
328 views

International Club - Marywood University
by dnpia
1,826 views

Housing and Res Life Extras
by BEMayProductions
19 views

One For The Money Official Trailer - In
by LongshotLIVE
1,930,669 views

Reebok CrossFit: "The Sport of Fitness Has Arr..."
by reebok
3,325,407 views

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EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDERICK F. FAGAL, JR.,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:14-cv-02404-ARC
)	
MARYWOOD UNIVERSITY,)	
)	
Defendant.)	
)	

DEPOSITION OF MICHAEL A. FOLEY, Ph.D.

(Taken by Plaintiff)

Raleigh, North Carolina

Friday, February 26, 2016

Reported in Stenotype by
Joan Daly Snover, RMR/CRR
Transcript produced by computer-aided transcription

1 Dr. Foley, and let me know when you're finished.

2 **A. Okay.**

3 MS. AHMAD: Dr. Foley, feel free to read
4 the entire e-mail if you want to.

5 **THE WITNESS: Okay.**

6 MS. AHMAD: If you don't, then just let us
7 know if you skimmed it.

8 **A. Okay. I have finished reading it. I forgot**
9 **that there was a stamp. I didn't recall that. I do**
10 **not recall this memo.**

11 BY MR. COHEN:

12 Q. You don't recall what? I'm sorry.

13 **A. I do not recall the memo.**

14 Q. Okay. Do you recall reading this e-mail
15 before today?

16 **A. No.**

17 Q. What's the date on this e-mail.

18 **A. January 13, 2012.**

19 Q. Do you remember visiting Professor Fagal on
20 the morning of January 23, 2012, and telling him that
21 he had to attend a meeting with the President in about
22 15 minutes?

23 **A. Yes.**

24 Q. Okay. What exactly did you tell Professor
25 Fagal when you first visited him and told him he had

1 this meeting to get to? I realize it's a long time
2 ago, and you can only do the best that your memory
3 serves you.

4 A. Basically what you just said. I went to
5 Dr. Fagal's office, and I said that he was to report
6 to Sister Anne's office in 15 minutes. And he asked
7 me what this was about, and my recollection is I said
8 I think you know what it's about. That was the most
9 that I said to my recollection.

10 We did not discuss anything further, and I
11 wasn't exactly sure what it was about. I mean, I knew
12 what it was about, but Sister Anne asked me as dean to
13 go talk to Dr. Fagal to report to her office in 15
14 minutes, and that's what I did.

15 Q. Okay. Just curious. If you had never seen
16 the e-mail that you just read that was Exhibit 3, why
17 would you assume that Dr. Fagal would know what the
18 meeting was about?

19 A. I had seen the video. I had seen the first
20 video.

21 Q. All right. I understand. Do you remember
22 that when you visited Dr. Fagal he was preparing for a
23 class that was about to begin 15 minutes later?

24 A. Yes.

25 Q. Okay. And whose decision was it to summon

1 Q. And who attended the meeting?

2 A. **Pat Dunleavy and I attended the meeting.**

3 Q. And President Munley?

4 A. **Well, yes.**

5 Q. And Dr. Fagal of course?

6 A. **Yes.**

7 Q. Nobody else?

8 A. **No.**

9 Q. Okay. Do you know whether the meeting was
10 recorded in some way?

11 A. **Pat Dunleavy took minutes.**

12 Q. Do you know if there was an audio recording
13 or video recording?

14 A. **I do not know. I do not believe so.**

15 Q. Okay. Did anybody other than Pat Dunleavy
16 take notes at the meeting?

17 A. **No. I mean Sister Anne might have. I don't**
18 **recall. I don't recall. I know Pat took minutes and**
19 **wrote up a report after the meeting that I signed off**
20 **on. I signed off on Pat's reporting of what**
21 **transpired at that meeting.**

22 Q. Okay. Let's talk about Ms. Dunleavy's
23 report. What do you mean by "report"? Did she write
24 a memo?

25 A. **It was just putting the notes together so**

EXAMINATION

BY MS. AHMAD:

Q. First, thank you again for taking the time to come here today. I know that you mentioned that you don't recall the specifics of who came to your office and what comments were made once this video was posted and went around campus. But do you recall the general feelings people had towards the video?

A. The general feelings?

MR. COHEN: Objection to form. You can answer. You can answer. I just made an objection.

A. Okay. I don't know anyone who was happy about it. Everyone was pretty much disgusted. They found it offensive, disrespectful.

BY MS. AHMAD:

Q. Okay. And did you ever hear any complaints? I know you mentioned a few earlier. Do you recall the specific complaints about this cartoon that was posted on Dr. Fagal's door and what the cartoon was?

A. The cartoon -- the one cartoon that I recall, and I think there were several, but the one I recall that had come to my office from somewhere, a student expressing concern, if not outrage, it pictured an Islamic terrorist at the gates of heaven

EXHIBIT L

From: Frederick Fagal [fffagal@yahoo.com]
 Sent: Sunday, January 15, 2012 7:55:21 PM
 To: linzgrov@roadrunner.com
 Subject: Re: Fred update :-)

Hi Lindsay,

Yeah, two separate audiences, faculty and students. Real-estate portfolio stuff totally made up. Hair dye factory joke depends on faculty figuring out that Heath dyes his hair too jet black for his age and the Pheasant's hair is dyed a light orange. Oh well ! Only those in the know know that Levine (written LeVINE as a joke because as a Jewish guy working for Hitler his name cannot be Levine!) is on his second family. Nothing wrong with that -- but it does get expensive ! Levine actually not a horrible guy, he might even laugh. I think he finds himself in a tough position carrying out orders he does not like....But OH WELL !

To the extent students see the videos I hope they might get exercised over the fact that the administration was/is trying to influence what they could see and hear. One would hope some students get at least a little pissed, else apathy reigns....Of course the students will not get the "in" faculty-administration jokes, but I don't think that matters. I don't know what will happen on the student end. But as YOU showed at Northwestern lo.those many years ago (heh) a squeaky wheel can get some quick grease. There does not *have* to be a big student occupy rally. But if a FEW letters are sent by parents which in effect say "What the hell are you doing up there in Scranton !?! My son/daughter can go to XXXXX STATE U and have more freedom and less repression." The mere implied threat of some transfers or little brother of sister crossing Marywood off the list might wake up some idiots.

Even if the administration stonewalls and does nothing they will have taken an embarrassing publicity hit which to them is a COST. If they consider acting like that in the future they might consider the cost and back off...with luck I will never know.

Could be a wild ride...Fred

From: "linzgrov@roadrunner.com" <linzgrov@roadrunner.com>
 To: Frederick Fagal <fffagal@yahoo.com>
 Sent: Sunday, January 15, 2012 1:39 PM
 Subject: Re: Fred update :-)

Fred,

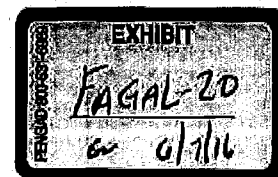
The real-estate portfolio/young wife stuff is really personal! Geez! I'm wondering if the students, who are transients, can get into this as much as you want, and convince their parents to write. I think you should take down the second video!!!

When I was in college, my bf decided to move into a girls' dorm just for fun, by switching rooms with someone (with a friend along). I wrote an anonymous letter to the administration complaining that my daughter was having to run into guys in her bathroom, and this wasn't what I sent her to Northwestern for! Etc. Those boys were out of there in 15 minutes. This is my only unethical act, ever!

Lindsay

--- Frederick Fagal <fffagal@yahoo.com> wrote:

> Hi Lindsay,



Well we got some snow - about 8 inches...So enjoy California (but don't move out there). I let loose on Friday afternoon with a letter to the faculty castigating the administration. Included below are links to the YouTube Hitler parody videos which explain how it all went down . Total viewing time about 7 minutes.

We hope Ben is doing okay. Andrew leaves today for the David Library for a month then off to Philly until about June 1. Let me know how you like the videos...FRED

--
Dear Marywood University Faculty Colleague ,

January 13, 2012

We deserve better. Our students deserve better. In November 2011 I spent my own money to get a speaker from the Foundation for Individual Rights in Education (FIRE) to give a presentation to an Introduction to Social Science class on November 30, 2011. The topic was "Know Your Rights: Free Speech and Thought Reform on Campus," and the speech tied into our study of the United States Constitution. I also spent my own money to pay for posters advertising the speech in Comerford Auditorium which was to be announced as open to all. Total cost to me about \$500. Given my previous run-ins with the administration, <http://www.marywoodfreespeech.com/History%20Page/Fagal%20History/adminVSfagal.htm> just to be safe (ha),

I had my posters stamped with the Student Life poster approval stamp. The Marywood Administration, without telling me, then decided to tear down the posters. No, I am not kidding.... laughable yet sad.

This letter ends with a fuller but still brief summary abstract of what occurred. I hope you read

the attachments which tell the complete story. For fun and insight as to "how it all went down" you must view the Hitler Parody satire videos on YouTube (see later below for links).

Based on the evidence,

I expect most of you (if only in private), will agree the Marywood administration (real people here...not an abstraction) exhibited egregious, despicable, contemptible behavior. This poisonous and considered! behavior

reflects badly on everyone associated

with Marywood. I am ashamed for the

institution and hope it mends its ways. At this point I think publicity is the only tool which might affect the Administration and inspire "hope and change" on this campus. Perhaps the Board of Trustees could at least discuss this type

of behavior behind closed doors or in private emails and conversations. One can

hope..., nay pray..... Attached to this

email are four items which I hope some (many?) of you read (#2 similar to #1 but even more complete):

1. A rather complete synopsis of the events surrounding the tearing down (circa Nov 29, 2011) of my "approved" posters announcing a speech about free speech (irony anyone?)

2. A complete record of what I sent to the Foundation for Individual Rights in Education (FIRE) to document how the situation unfolded. Learn about FIRE here: <http://thefire.org/about/mission/>. This big document includes (3.) below, my letter to Levine (and President Munley by agreed-to forwarding)

3. A copy of my (at first on paper) December 5, 2011 letter to VP Alan Levine. In that letter and in the December 5

meeting with Alan Levine I proposed a resolution of the "free speech poster tear down" controversy. Mr. Levine asked me for an electronic copy (which I sent) and he said he would forward it to President Anne Munley. In any negotiation list of requests (demands?) such as I submitted there is obviously a possibility for a meeting of the minds and compromise – e.g. perhaps I would give up my demand for pizza for students (hch) or a public apology or one of the requested FIRE visits.

4. A copy of the December 15, 2011 letter to me from Alan Levine [VP for Academic Affairs] which responds to my letter of December 5, 2011. In the response letter Mr. Levine, speaking for the administration (i.e. President Anne Munley), writes "...we are not willing to undertake any (emphasis added-fff) of the specific requests that are contained in your letter."

Perhaps

you have heard of Hitler

Parody videos. From Wikipedia regarding the movie Downfall, http://en.wikipedia.org/wiki/Downfall_%28film%29 the film about Adolph Hitler's last days, which provided selected snippets so I could create the Marywood free speech poster tear-down parodies:

"In

October 2010, YouTube stopped blocking any Downfall-derived parodies,[18] and is now placing advertisements on some of them. Corynne McSherry, an attorney specializing in intellectual property and free speech issues[19] for the Electronic Frontier Foundation, stated, "All the [Downfall parody videos] that I've seen are very strong fair use cases and so they're not infringing, and they shouldn't be taken down." [20] "

I

made two short satire videos. Part 1 deals with the events of November 28, Part 2 deals with the events of November 30. Comments from (pre-release) viewers:

"Brilliant!" "Love these!"

.... "SO funny" ... "It's definitely funny

and I think it will appeal to students and faculty alike." ... "IT DOES HAVE ITS

MOMENTS, ESP THE SCRATCHING PART!" ... "It was nice knowing you, Fred." ... "I think

you will get a positive response from your video...too funny to not." ... "OMG!

Funny as hell. Pretty powerful stuff. Keep fighting the good fight." "The videos were definitely very amusing and certainly got the point

across" ... "Wow Fred.... Great job on the video.... what a brilliant way to

get your point across!!!! I hope it helps open their eyes!!!! very creative and well done!!!!"

On

YouTube just search for Hitler parody Marywood, I imagine it will show up...

LINK to VIDEO #1 <http://www.youtube.com/watch?v=1naxKnNc06o&feature=youtu.be>

LINK to VIDEO #2

<http://www.youtube.com/watch?v=4hzvy5sTqUw&context=C3c1bc55AD0EgsToPDskIZsiH3K7AqILR-ci2V9HK>

I

can send anyone low definition versions of the videos suitable (each is under 20 MB) for email attachments. Just ask...

A

few colleagues concerned for my welfare have told me they fear the administration will try to fire me over this. One colleague says perhaps I should have asked for an appointment with President Munley and made a final appeal – i.e. I should have pursued every last ditch channel possible. I did not want to go into such a meeting and in essence have as the only new point to raise a “blackmail” threat to go public as I do here and in the videos. I did not want that. If the risk to me is there it is there; and if the worst does come to pass I will have to battle as best I can with the support of family and friends and colleagues and perhaps concerned outsiders.

I will of course be

pleased to hear from any of you – from the grizzled veteran to the first-year hire. BEWARE – according to page 86 of the Faculty Handbook “...there are no specific laws, rules, or regulations that protect the privacy of a user’s files, electronic mail messages, or any other information retrieved as a result of a person’s session on the Marywood system.”

Thus,

if you email me and want to protect

yourself, you might best use a backup email address such as your old youthful one coolcat@hotmail.com and send it from anywhere but Marywood. Also,

if you are my friend, or will soon be, you need not say hello to me in public (heh).

My home phone is 315-685-0429. Even a regular mail anonymous “good luck” note sent to me at home (address below) would be very appreciated...

Abstract:

On November 28-29 2011 Marywood

University tore down “stamped approved” posters announcing an open to all presentation by Will Creeley of FIRE (Foundation for Individual Rights in Education) titled “Know Your Rights: Free Speech and Thought Reform on Campus.”

On December 5 Alan Levine, VP for Academic Affairs, told me there were no written policy statements which justified Marywood’s action, but that my offer of a \$50 random prize to a student for attending was, in the eyes of the administration’s Executive Council which

met on November 29, “pandering” to students to get them to come to class, and that this justified tearing down the posters (without even the mere common courtesy of notifying me about the supposed problem). Even if a problem did exist a magic marker could have solved it, poster tear-downs were not

necessary. Later that day (Dec. 5) I sent Mr. Levine two emails, one showing that Professor N. Gregory Mankiw of Harvard (former Chairman of the President’s Council of Economic Advisers, author of today’s largest selling economics textbook) recently pandered to his students by inviting ten select quick email responders (first come, first served) to join him as his guest for lunch after class at a Chinese restaurant in Harvard Square. I suggested that Marywood University warn Harvard that it has

a

panderer in its midst! Finally, also on December 5, I forwarded to Mr.

Levine an email from spring 2011 wherein the Marywood Administration encouraged professors to send students to a speech about sexual assault. Raffle prizes galore, including food and TWO \$50 VISA cards. Quotation from the email “We

hope faculty will offer students extra credit for attending, or use some of your class time to attend the event with your students [emphasis added]." Laughable! Talk about "pandering!" It is transparently obvious Marywood University is discriminating against Professor Fagal... Your Honor, I rest my case. Full details below.

By Frederick F.
Fagal, Jr. (Ph.D.) Associate Professor of Economics, Marywood University,
Scranton, PA
Thank
you for reading.....

Sincerely,
Fred
Fagal
(Frederick
F. Fagal, Jr. Associate Professor of
Economics)...at Marywood 1987 –
Home
address:
Fred
Fagal
17
East Lake Street
Skaneateles,
NY 13152

EXHIBIT M

From: Frederick Fagal [fffagal@yahoo.com]
Sent: Tuesday, January 03, 2012 1:46:49 PM
To: Rod Carveth
Subject: Re: Happy New Year -- Keep smiling

Hi Rod,

I really do appreciate your thoughtful comments after a night's sleep. You sound like my wife... (heh). And I know the Hitler link is considered by many to be out of bounds. I would have to face that possibility. I am going to rethink this, but I *think* I won't change my mind about the release. I will look over the faculty manual again (heh).

Go to YouTube. In the search box type Hitler parody. There are tons of them out there....helps my case.

I always thought countries like Germany were wrong pass to laws which provide criminal penalties for saying that the Holocaust did not exist. Let a fool be a fool. Recently in France a law was proposed/passed which states that no one in France could claim that there was **not** a massacre/genocide/holocaust of Armenians in World War I. So now the Turks are upset. Pox on the Turks, pox on France for passing/considering such law. If I want to claim Unicorns or God or whatever so what...

Assuming the videos are released, if Marywood considers going after my job they will probably realize that I would NOT go quietly. If I were a tenured 42 year old likely to cause trouble for another 20-25 years then the game might be worth their votive candle. But I will be 66 years old in a month! IF they are rational they will think I can't be around *that* much longer and they would take a big publicity hit for trying to get rid of me.

Will keep you informed Rod..thanks.... Fred

From: Rod Carveth <rodcarveth@hotmail.com>
To: Frederick Fagal <fffagal@yahoo.com>
Sent: Tuesday, January 3, 2012 7:50 AM
Subject: RE: Happy New Year -- Keep smiling

Fred,

Honestly, I think it is a brilliant satire. If it was released, however, I think you would catch an incomparable amount of grief. Any time Hitler gets raised, no one pays attention to the message, but the symbolism of Hitler as a murderer and butcher. I think the university would try and find some loophole to undo your tenure and fire you.

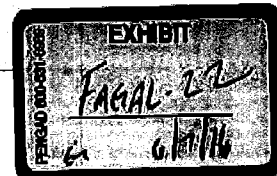
It's not what you are saying hear, but how you are saying it that puts you at risk.

Is that right? No. But, when does something have to be "right" when it comes to an academic institution, esp., one that espouses "core values," yet will redefine them at the drop of a hat.

Just my two cents.

Rod

Date: Mon, 2 Jan 2012 19:49:23 -0800



000200439.00001

From: fffagal@yahoo.com
Subject: Re: Happy New Year -- Keep smiling
To: rodcarveth@hotmail.com

I worked hard on 'em. Had some input from a Marywood graduate who worked with me on this stuff before. He had some idea for getting more student-oriented issues into it. But mostly me!

And what do you predict will happen should these be made public? Heh....Glad a communications guy like you says "Funny as hell" and "pretty powerful stuff" Thanks for watching....Fred

From: Rod Carveth <rodcarveth@hotmail.com>
To: Frederick Fagal <fffagal@yahoo.com>
Sent: Monday, January 2, 2012 10:28 PM
Subject: RE: Happy New Year -- Keep smiling

Fred,

OMG! Funny as hell. Pretty powerful stuff.

Keep fighting the good fight.

Rod

Date: Mon, 2 Jan 2012 17:40:21 -0800
From: fffagal@yahoo.com
Subject: Re: Happy New Year -- Keep smiling
To: rodcarveth@hotmail.com

Vidco #2 !

From: Rod Carveth <rodcarveth@hotmail.com>
To: Frederick Fagal <fffagal@yahoo.com>
Sent: Monday, January 2, 2012 8:07 PM
Subject: RE: Happy New Year -- Keep smiling

Fred,

Love to see the video -- and, no, I don't have any problems with my name being used in that manner. Should be funny.

Rod

Date: Mon, 2 Jan 2012 14:07:49 -0800
From: fffagal@yahoo.com
Subject: Re: Happy New Year -- Keep smiling
To: rodcarveth@hotmail.com

Hi Rod,

Glad to hear your daughter is fine. One thing I recall wrt her was you were teaching her to drive --- or something to do with a car !

Would you like to see my (still quarantined in possible revision) videos regarding the latest Marywood situation?> Hitler parody, I put your name in it on one screen (Munley or some other Marywood fascist calls you a jerk, but will take it out if you like !). Let me know....again, on the QT for now...no leaking!

Glad to hear you're better settled...Fred

From: Rod Carveth <rodcarveth@hotmail.com>
To: Frederick Fagal <fffagal@yahoo.com>
Sent: Monday, January 2, 2012 4:48 PM
Subject: RE: Happy New Year -- Keep smiling

Fred,

The more things change, the more they stay the same.

Really glad I don't have to deal with that crap anymore.

What hypocrisy!

My daughter is doing very well. She's a second-semester sophomore at Central CT State, majoring in biology.

I moved to take over the Communication Program at Goodwin College. Fitchburg State was two hours away. Goodwin is 15 minutes. Pay sucks, but I make that up through moonlighting.


Keep fighting the good fight.

Rod

Date: Mon, 2 Jan 2012 13:12:47 -0800
From: fffagal@yahoo.com
Subject: Happy New Year
To: rodcarveth@hotmail.com

Hi Rod,

Hope this finds you well and glad to be out of the rat race I endure ! More baloney (to be polite) thrown my way. **Abstract below for you but please do not for release/share to/with anyone**, but trusting you I thought I

would clue you in and you could reflect on how lucky you are  :) happy . Deciding on a course of action.... I asked for reimbursement of the \$350 speaker *I paid* plus the cost of posters *I purchased* plus a public apology (right) and invite FIRE to come back twice in the spring (day and night) and also Marywood to sponsor a debate with Robert Spencer re Islam in the Fall 2012 semester. All denied, no negotiation... I think FIRE might write a letter...we'll see what happens. Hope all is well with your daughter(s?) etcetera,--- and how is the job (and pay?)??....best... Fred (cell 315-406-8063)

Abstract: On November 28-29 2011 Marywood University tore down “stamped approved” posters announcing an open to all presentation by Will Creeley of FIRE (Foundation for Individual Rights in Education) titled “Know Your Rights: Free Speech and Thought Reform on Campus.” On December 5 Alan Levine, VP for Academic Affairs, told me there were no written policy statements which justified Marywood’s action, but that my offer of a \$50 random prize to a student for attending was, in the eyes of the administration’s Executive Council which met on November 29, “pandering” to students to get them to come to class, and that this justified tearing down the posters. Later that day I sent Mr. Levine two emails, one showing that Professor Mankiw of Harvard (former Chairman of the President’s Council of Economic Advisers, author of today’s largest selling economics textbook) recently pandered to his students by inviting ten select quick email responders (first come, first served) to join him as his guest for lunch after class at a Chinese restaurant in Harvard Square. *I suggested that Marywood University warn Harvard that it has a panderer in its midst.* Finally, also on December 5, I forwarded to Mr. Levine an email from spring 2011 wherein the Marywood Administration encouraged professors to send students to a speech about sexual assault. Raffle prizes galore, including food and **TWO \$50 VISA cards**. Quotation from the email “We hope faculty will offer students extra credit for attending, or *use some of your class time to attend the event with your students* [emphasis added].” Laughable! Talk about “pandering!” It is transparently obvious Marywood University is discriminating against Professor Fagal... Your Honor, I rest my case. Full details below.

By Frederick F. Fagal, Jr. (Ph.D.) Associate Professor of Economics, Marywood University, Scranton, PA